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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/538,543

06/10/2005

Loren Lantz

M-1107

3681

54964

7590

09/25/2006

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EXAMINER

TOWA, RENE T

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/538,543	Applicant(s) LANTZ ET AL.	
	Examiner Rene Towa	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/18/06, 4/5/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:

At line 6 of page 1, at line 20 of pages 9 & 11, the disclosure makes reference to "PCT Application No. PCT/US03/\_\_\_\_," which should apparently read -- PCT Application No. PCT/US03/00256--.

At line 29 of page 10, "inner protuberances 54" should apparently read --inner protuberances 62-- as per line 23.

Appropriate correction is required.

### ***Claim Objections***

2. Claim 12 is objected to because of the following informalities:

At line 2-3 of the claim, the limitations "fingers" and "longitudinal ribs" render the claim indefinite; for example, it is unclear from the alternative language used in claim 1 whether or not the thermometer comprises a single or a plurality of "fingers" and "longitudinal ribs."

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3736

4. Claims 1-2, 5-9, 11 and 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Sato (US Patent No. 3,738,173).

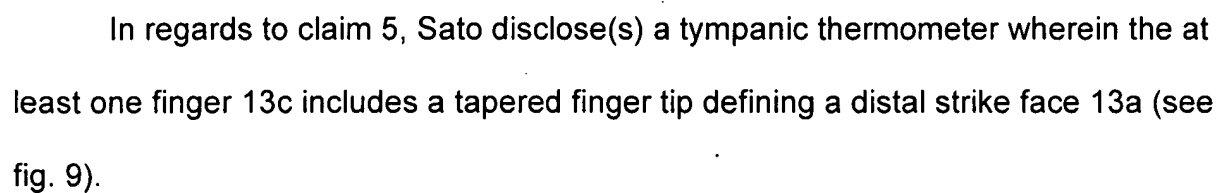
In regards to claim 1, Sato disclose(s) a tympanic thermometer comprising:  
a heat sensing probe 11 defining a longitudinal axis and an outer surface extending from a distal end of the tympanic thermometer;

an ejection apparatus 13 including at least one finger 13c extending from the distal end of the tympanic thermometer and being configured for movement along the outer surface of the probe 11; and

a probe cover 12 being mountable to the distal end of the tympanic thermometer, the probe cover 12 defining an inner surface configured to engage the outer surface of the probe 11, the probe cover 12 including at least one longitudinal rib 12d radially projecting from the inner surface thereof, the longitudinal rib defining a proximal face to facilitate ejection of the probe cover 12,

wherein the at least one finger 13c is configured to engage the proximal face (see figs. 4, 6 & 8-10; column 2/lines 30-48 & 51-57; column 3/lines 11-20; column 4/lines 45-56; column 5/lines 7-15; column 6/lines 34-38 & 55-64; column 7/lines 3-6, 30-38, 46-54 & 63-68).

In regards to claim 2, Sato disclose(s) a tympanic thermometer wherein the outer surface of the probe defines a groove 29, transversely oriented relative to the longitudinal axis, which is configured to receive a portion of the probe cover 12 for releasably retaining the probe cover 12 with the probe (see figs. 6 & 8; column 3/lines 11-20; column 5/lines 7-15; column 7/lines 3-6).



Art Unit: 3736

In regards to claim 6, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13c is movable between a retracted position (see fig. 9) and an extended position (see fig. 4).

In regards to claim 7, Sato disclose(s) a tympanic thermometer whereby the at least one finger 13c is biased to the extended position (see fig. 4; column 6/lines 55-64).

*It is noted that the collar 13 is biased into the extended position against the force of spring 26 via retaining means 19 (see column 6/line 65 to column 7/line 2).*

In regards to claim 8, Sato disclose(s) a tympanic thermometer whereby the at least one finger 13c is releasably fixable in a retracted position (see fig. 4; column 6/lines 55-64).

In regards to claim 9, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13c is releasably fixable via a latch, whereby the latch includes a release button 15 that is engageable to release the at least one finger 13c from the retracted position (see fig. 9; column 7/lines 63-68).

In regards to claim 11, Sato disclose(s) a tympanic thermometer wherein the at least one longitudinal rib 12d has a transverse face having a substantially parallel orientation relative to the longitudinal axis of the probe (see fig. 9).

In regards to claim 13, Sato disclose(s) a tympanic thermometer comprising:  
a heat sensing probe 11 defining a longitudinal axis and an outer surface extending from a distal end of the tympanic thermometer, the probe defining a transverse groove 29 in the outer surface;

an ejection apparatus 13 including at least one finger 13c extending from the distal end of the tympanic thermometer and being configured for movement along the outer surface of the probe, the at least one finger 13c being disposed for movement proximal to the transverse groove 29; and

a probe cover 12 having an inner surface being releasably mountable to the outer surface of the probe, the probe cover including at least one longitudinal rib 12d projecting from the inner surface of the probe cover 12, the at least one longitudinal rib defining a proximal face configured for engagement with the at least one finger 13c;

wherein the proximal face and the at least one finger 13 engage for moving the at least one finger 13 between a retracted position and an extended position (see figs. 4, 6 & 8-10; column 2/lines 30-48 & 51-57; column 3/lines 11-20; column 4/lines 45-56; column 5/lines 7-15; column 6/lines 34-38 & 55-64; column 7/lines 3-6, 30-38, 46-54 & 63-68).

In regards to claim 14, Sato disclose(s) a tympanic thermometer wherein the transverse groove 29 is disposed circumferentially about the outer surface of the probe and substantially perpendicular to the longitudinal axis of the probe (see figs. 6 & 8; column 3/lines 11-20; column 5/lines 7-15; column 7/lines 3-6).

In regards to claim 15, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13 includes a tapered finger tip defining a distal strike face 13a (see fig. 9).

Art Unit: 3736

In regards to claim 16, Sato disclose(s) a tympanic thermometer wherein the distal strike face 13a is configured for engagement with the proximal face of the at least one longitudinal rib 12d (see figs. 4 & 9; column 6/lines 41-44).

In regards to claim 17, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13 is biased to the extended position (see fig. 4).

*It is noted that the collar 13 is biased into the extended position against the force of spring 26 via retaining means 19 (see column 6/line 65 to column 7/line 2).*

In regards to claim 18, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13 is releasably fixed in the retracted position (see fig. 9; column 7/lines 63-68).

In regards to claim 19, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13c is releasably fixable via a latch, the latch including a release button 15 being engageable to release the at least one finger 13 from the retracted position (see figs. 4 & 9).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4, 10, 12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato ('173).



Art Unit: 3736

Sato discloses a tympanic thermometer, as disclosed above, that teaches all the limitations of the claims except Sato does not teach a plurality of fingers or longitudinal ribs. However, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a thermometer similar to that of Sato with a plurality of fingers and longitudinal ribs since such a modification would amount to a design choice. It has previously been held that duplicating part for a multiple effect is not patentable--See *In re Harza*, 274 F.2d 669, 671, 124 USPQ 378, 380 (CCPA 1960).

More in regard to claim 12, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a thermometer similar to that of Sato, as modified above, with a plurality of equidistantly spaced fingers and/or longitudinal ribs since such a modification would amount to a design choice. It has previously been held that changing aesthetic design is not patentable--See *In re Seid*, 161 F.2d 229, 231, 73 USPQ 431, 433 (CCPA 1947).

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sato ('173) in view of Makita et al. (US Patent No. 5,340,215).

Sato discloses a thermometer, as disclosed above, that teaches all the limitations of the claim except Sato does not disclose a plurality of protuberances projecting from the inner surface of the probe cover. However, Makita et al. disclose a thermometer wherein the portion of the probe cover 9 includes a protuberance projecting from the inner surface of the probe cover 9 and being proximally spaced from the distal end of the probe cover (see figs. 2 & 6; column 4/lines 53-54 & 59-61). Since Sato teaches a retaining means for releasably retaining the probe cover, it would have been obvious to

Art Unit: 3736

one of ordinary skill in the art at the time Applicant's invention was made to provide a thermometer similar to that of Sato with a protuberance similar to that of Makita et al. in order to releasably attach the probe cover to the probe. Moreover, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a thermometer similar to that of Sato as modified by Makita et al. with a plurality of protuberances since such a modification would amount to a design choice. It has previously been held that duplicating part for a multiple effect is not patentable--See *In re Harza*, 274 F.2d 669, 671, 124 USPQ 378, 380 (CCPA 1960).

### **Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 4,112,762 to Turner et al. discloses a probe cover grip and release device.

US Patent No. 7,063,458 to Tabata et al. discloses an ear type clinical thermometer.

US Patent No. 4,588,306 to Burger et al. discloses an electronic thermometer probe assembly.

US Patent No. 3,999,434 to Yen discloses a temperature probe assembly and probe cover retainer.

US Patent No. 3,905,232 to Knute discloses electronic thermometer.

US Patent No. 6,053,875 to Rosenbaum et al. discloses a removable tip an acoustic reflectometer.

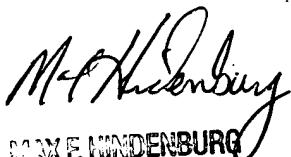
Art Unit: 3736

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rene Towa whose telephone number is (571) 272-8758. The examiner can normally be reached on M-F, 8:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RTT

  
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